

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT PIERCE DIVISION

UNITED STATES OF AMERICA, .  
 .  
 Plaintiff, .  
 .  
 vs. .  
 .  
 RAYMOND SAUNDERS, . Fort Pierce, FL  
 . August 15, 2023  
 Defendant. .

APPEARANCES :

**Pauline A. Stipes, Official Federal Reporter**

1           THE COURT: Thank you. Please call the case. You may  
2 be seated.

3           THE COURTROOM DEPUTY: United States versus Raymond  
4 Saunders, case number 23-14013. Will the parties please make  
5 your appearance, starting with the Government.

6           MR. McMILLAN: Good morning, your Honor, John McMillan  
7 on behalf of the United States. With me at counsel table is  
8 Special Agent Josh Woodbury of Homeland Security  
9 Investigations.

10          THE COURT: Good morning.

11          MR. ROTH: Your Honor, my name is Martin Roth, I  
12 represent Raymond Saunders, and he is with me at the Defense  
13 table.

14          THE COURT: Nice to see you, Mr. Roth. Hello, Mr.  
15 Saunders.

16          THE DEFENDANT: Good morning.

17          PROBATION OFFICER: Good morning, your Honor, Toni  
18 Gagliardi on behalf of Probation.

19          THE COURT: We are here for your sentencing hearing,  
20 Mr. Saunders, as you are aware.

21          THE DEFENDANT: Yes, ma'am.

22          THE COURT: This matter went to trial and you were  
23 adjudicated guilty of Counts 1 through 6 and 77 of the  
24 indictment. I have reviewed the full record in anticipation of  
25 today's proceeding, I obviously presided over the trial. I am

1 aware of the facts as presented and I have read the numerous  
2 filings associated with the PSI, including the objections to  
3 the PSI filed by counsel and the motion for a downward  
4 variance.

5 Mr. Roth, are there any other materials the Court  
6 should have received in anticipation of the hearing?

7 MR. ROTH: Judge, I'm somewhat apologetic, I was on  
8 vacation the last two weeks, and I filed very brief  
9 supplemental objections yesterday, and I am hopeful that the  
10 Court has seen those.

11 THE COURT: I have and it is exceedingly untimely.  
12 The Government made known that it was seeking an obstruction  
13 enhancement, for example, at the end of July, and at 8:00 p.m.  
14 or so the night before sentencing you are objecting to  
15 substantive content in support of that enhancement.

16 What is the reason for the untimely filing?

17 MR. ROTH: Judge, the PSI was revised, it was filed on  
18 Pacer August 8th.

19 THE COURT: Yes, but the Government's objection to the  
20 initial PSI in which the Government laid out its intent to seek  
21 an obstruction enhancement based on the threatening behavior  
22 was filed on July 28th. Correct me if I'm wrong, Mr. McMillan.

23 MR. McMILLAN: It was, your Honor.

24 THE COURT: Okay.

25 MR. ROTH: The Probation Office always go in lock step

1 with what the Government alleges, especially when there is no  
2 evidence of it in the record. So, I waited to see how the PSI  
3 would come out.

4 *THE COURT:* But the proper course would have been to  
5 respond to the Government's objections and make known to the  
6 Court that you disagreed factually with the basis for the  
7 obstruction enhancement.

8 Let me turn to Mr. McMillan. Do you intend to provide  
9 evidence today, Mr. McMillan, to support the obstruction  
10 enhancement?

11 *MR. McMILLAN:* We are, your Honor. I do have a  
12 witness here, Carlos Rodriguez Rodriguez, who is prepared to  
13 testify. While I agree with your Honor that it is untimely, I  
14 think that the Court can nonetheless take the objection into  
15 consideration and that we will have evidence that will rebut  
16 that objection.

17 *THE COURT:* Okay. In terms of Mr. Rodriguez  
18 Rodriguez, a very substantial reduction was already granted.  
19 Are you contemplating some additional motion in light of his  
20 testimony today?

21 *MR. McMILLAN:* I am not, your Honor.

22 *THE COURT:* All right. Mr. Roth, I will in this  
23 instance accept your untimely filings, but caution you in the  
24 future to stick to the deadlines so I can have a properly  
25 developed factual record with enough time to review it before

1 the hearing.

2 Let's turn first -- what are the unresolved objections  
3 to the PSI starting with the first one, Mr. Roth?

4 *MR. ROTH:* Thank you, Judge.

5 Your Honor, I object to the six-level enhancement  
6 based on the Guideline Section 2C1.1(b) (2) (B), because the  
7 offense involved smuggling at least 25 aliens and less than 99  
8 aliens.

9 The testimony of the co-defendant, Mr. Rodriguez, is  
10 that he was only aware of six to ten aliens on board the  
11 vessel. The offense requires knowledge. The jury considered  
12 the evidence presented in the case. They only convicted the  
13 Defendant of smuggling with regard to six aliens.

14 So, we think that the lesser enhancement would apply.  
15 Instead of a -- excuse me. Instead of a six-level enhancement,  
16 we think that there should only be a three-level enhancement.

17 *THE COURT:* All right. Now, I know you have indicated  
18 in your argument that there is a mens rea component to that  
19 enhancement. The text of the provision, however, just states  
20 if the offense involved the smuggling, comma, transporting,  
21 comma, or harboring of six or more unlawful aliens increase as  
22 follows, and then elsewhere in this Guideline section, the  
23 Commission has included specific mens rea adverbs such as  
24 intentionally or recklessly in as an example (b) (6).

25 Why wouldn't I just ask whether in fact the offense

1 involved however many aliens? And here there is no dispute  
2 there were I believe 78.

3 *MR. ROTH:* That can't be properly disputed, your  
4 Honor. The number of aliens on board the vessel was documented  
5 by the Coast Guard.

6 *THE COURT:* Right.

7 *MR. ROTH:* I think it was Exhibit 16, if I remember,  
8 the Defense entered into a stipulation. However, the jury  
9 heard the evidence and they concluded that the Defendant could  
10 only be held responsible for six, and unless the Court believes  
11 the Court should reject the clear finding of the jury and  
12 instead impose the greater enhancement, I think that would be  
13 wrong to do.

14 I think juries have to have some kind of -- you know,  
15 their findings have to have some kind of binding consequences  
16 on everybody.

17 *THE COURT:* Thank you. Mr. McMillan, what is your  
18 argument in response to this particular suggestion, which is  
19 that there is a knowledge component to (b) (2), the Defendant  
20 only knew apparently there were between six and ten aliens on  
21 the vessel, and the jury convicted him of six counts as opposed  
22 to the full set?

23 So, for those reasons the Defense, I guess, is moving  
24 for a three level instead of a six level. What is your answer  
25 or response?

1           MR. McMILLAN: We responded at some length  
2 exhaustively in our response to the Defendant's objections to  
3 the PSI setting forth the case law in this regard that there is  
4 no mens rea requirement for that enhancement under the  
5 Guidelines. And in addition to which, the Court can in its  
6 discretion rely on any data in making its decision as to an  
7 appropriate punishment so long as it is supported by credible  
8 evidence, which in this case your Honor had the opportunity to  
9 listen to the testimony.

10           Yes, the jury acquitted the Defendant of those other  
11 counts, but that doesn't mean that -- traditionally the Court  
12 has always been able to go and take into account the evidence  
13 which was adduced at trial which appeared before the Court as  
14 long as your Honor finds it to be credible evidence.

15           And I think that the credibility as to the number of  
16 aliens smuggled onboard the boat is beyond any doubt. It is  
17 not based on one person's testimony, but on actually going  
18 through each one of the people there, and most importantly, a  
19 stipulation by the Defense as to who those people were.

20           So, I would submit that there is no basis not to go  
21 and count the entirety of those people as Probation has done.  
22 That is entirely consistent with the intent of Congress and the  
23 Sentencing Commission in passing that particular guideline.

24           As your Honor has pointed out, the Sentencing  
25 Commission and Congress wanted there to be a particular mens

1 rea requirement, they were well aware of that and included that  
2 in the particular subsection of the Sentencing Guidelines.

3 THE COURT: All right. What -- is there any Eleventh  
4 Circuit authority that has directly answered the question  
5 whether the Government has to prove the Defendant's knowledge  
6 of the specific number of aliens on board?

7 MR. McMILLAN: No, your Honor.

8 THE COURT: What is the closest authority you have to  
9 say it is not required other than the plain text of the  
10 guideline?

11 MR. McMILLAN: Your Honor, unfortunately I don't have  
12 that particular brief for some reason in front of me, but I  
13 believe I put that case in my response.

14 THE COURT: Is it an Eleventh Circuit case?

15 MR. McMILLAN: No, I don't believe it is, your Honor.

16 THE COURT: Okay.

17 MR. McMILLAN: I believe it is actually a Ninth  
18 Circuit case.

19 THE COURT: I think you are referring to a case called  
20 United States versus Rivas.

21 MR. McMILLAN: That would be it, your Honor.

22 I thoroughly checked the Eleventh Circuit, in fact all  
23 of the circuits to find a case that was precisely on point.  
24 Strange as this may seem, it hasn't really come up, I think  
25 because they have always, following the rules of relevant



1 conduct, looked at how many people were in the vehicle or  
2 vessel being transported and always counted those. I believe  
3 that your Honor is correct that that was the case I cited.

4 That case I believe was vehicular transportation of  
5 illegal aliens and not a vessel, but the principles are all the  
6 same.

7 *THE COURT:* Anything further, Mr. Roth, before I rule  
8 on the particular objection?

9 *MR. ROTH:* Your Honor, I would only add that when the  
10 case gets submitted to a jury under this charge, it is not just  
11 a question of counting the number of people on board; they have  
12 to determine if each individual was an alien and each  
13 individual was without authority to enter the United States,  
14 and I think that the Courts should take notice of the work that  
15 juries do because the more frequently the Courts simply ignore  
16 jury findings, the less impactful and the right to a jury trial  
17 counts.

18 *THE COURT:* All right. Thank you, Mr. Roth. I  
19 considered your objection to the number of aliens enhancement,  
20 this is specifically paragraph 21 in the final PSI, and your  
21 objection is overruled.

22 I think as a preliminary matter, the text of the  
23 provision does not include a direct mens rea requirement in  
24 contrast to other provisions of that same section. In this  
25 case the trial is clear and undisputed that there were 78

1 aliens on the vessel -- is it 78 or 76, Mr. McMillan?

2 MR. McMILLAN: It is 76, your Honor, not counting  
3 Defendant Saunders and cooperating Defendant Carlos Rodriguez  
4 Rodriguez.

5 THE COURT: So then we will go with 76. The trial  
6 evidence is clear and undisputed that there were 76 illegal  
7 aliens crammed into the cabin below deck. There was no dispute  
8 about that. In fact, there was a stipulation to that effect.

9 I take your point that the jury ultimately didn't  
10 convict the Defendant of the other alien smuggling counts, but  
11 I think the law permits the Court to consider the undisputed  
12 evidence about the number of individuals on board the vessel.

13 I would also say that it strains credulity to  
14 believe that this Defendant had no clue of the very large  
15 number of people onboard the vessel. This is a long voyage  
16 that began very early in the morning and spanned almost the  
17 entire day until the evening hours, and just as Mr. Rodriguez  
18 ultimately had to go into the cabin to use the facilities at  
19 which point he then clearly discovered the overwhelming number  
20 of people crammed inside, I think reasonable inferences  
21 indicate the same as to your client.

22 So, for those reasons your number of persons objection  
23 is denied.

24 Let's turn to your next objection.

25 MR. ROTH: Yes, your Honor.

1 Judge, I object to the enhancement described in  
2 paragraph 22 of the PSR for transporting minor unaccompanied  
3 aliens.

4 The Defense views that the record doesn't support that  
5 finding, doesn't support that any of the aliens on the vessel  
6 were minors, and further, it doesn't support a finding that  
7 none of the other adult aliens who were on board the vessel had  
8 legal authority to be guardians of any minor child, if any, on  
9 the vessel.

10 When the jury deliberated and returned its verdict  
11 convicting the Defendant on Counts 1 through 6, none of those  
12 individuals are minors. There was no jury interrogatory  
13 submitted, there was no finding that any unaccompanied minor  
14 children were transported, and I don't believe --

15 *THE COURT:* But you agree, correct, that the trial  
16 evidence shows through stipulation that there were minors on  
17 board the vessel within the 76 group?

18 *MR. ROTH:* I read the stipulation very carefully, it  
19 doesn't reference any of the aliens as minors.

20 *THE COURT:* It includes the dates of birth.

21 *MR. ROTH:* Well, the indictment does and the  
22 indictment lists every person by first and last initial, and in  
23 it it includes dates of birth, but as to the aliens in Counts 1  
24 through 6, none of them were minors.

25 So the other dates of birth of aliens that was

1 provided by the indictment, the jury didn't conclude that the  
2 Defendant was guilty with regard to those persons.

3 THE COURT: Mr. McMillan, what trial evidence, if any,  
4 supports the unaccompanied aspect?

5 MR. McMILLAN: None, your Honor, and I will be happy  
6 to go and present the testimony of Special Agent Joshua  
7 Woodbury who is here to establish that.

8 THE COURT: Let's do that then.

9 MR. McMILLAN: Your Honor, the United States calls  
10 Joshua Woodbury to the stand.

11 THE COURT: Thank you, Mr. Woodbury. Remain standing  
12 to be sworn in. Mr. McMillan, please speak slowly.

13 JOSHUA WOODBURY, GOVERNMENT'S WITNESS, SWORN

14 THE WITNESS: Good morning, your Honor.

15 THE COURT: Good morning.

16 DIRECT EXAMINATION

17 BY MR. McMILLAN:

18 Q. Would you please state your name and spell it for the  
19 record?

20 A. Joshua Woodbury, W-O-O-D, as in delta, B, as in bravo,  
21 U-R-Y.

22 Q. Who are you employed by?

23 A. Homeland Security Investigations, Department of Homeland  
24 Security.

25 Q. Were you the agent assigned to the investigation of this

1 case?

2 A. I was.

3 Q. Who was the Defendant in this case?

4 A. Raymond Saunders and Mr. Carlos Rodriguez Rodriguez.

5 Q. Did you have occasion to go out on a United States Coast  
6 Guard cutter on or around November 22, 2023, to interview the  
7 illegal aliens who were found onboard a vessel?

8 A. Yes.

9 Q. Is that the vessel that your investigation subsequently  
10 determined had been driven by Carlos Rodriguez Rodriguez and  
11 Defendant Raymond Saunders?

12 A. That is correct.

13 Q. Did you and another deportation officer from Immigration  
14 and Customs Enforcement interview those Haitians onboard the  
15 vessel together?

16 MR. ROTH: Objection, calls for hearsay.

17 THE COURT: Overruled.

18 THE WITNESS: Yes.

19 BY MR. McMILLAN:

20 Q. And you utilized the services of an interpreter to speak to  
21 them?

22 A. During that time of this investigation we had HSI special  
23 agents that were fluent in the Creole language. They were  
24 there using their language skills to interpret for us.

25 Q. You were actually conducting the interview yourself?

1 A. Correct.

2 Q. Did you have occasion to determine, first, whether there  
3 were any minors on board the vessel?

4 A. Yes.

5 Q. And who were those minors?

6 A. Would you like me to say their names on the record?

7 Q. Yes, please.

8 A. Okay. Anaika Saint Elinat.

9 Q. If you could spell them for the court reporter, please.  
10 That would probably be very helpful.

11 A. A-N-A-I-K-A, S-A-I-N-T, E-L-I-N-A-T.

12 Q. And for each of these individuals was a date of birth also  
13 provided?

14 A. That is correct.

15 Q. And what was the date of birth of that person?

16 A. 9/17/2015. Correction, on Elinat, the last name is  
17 C-L-I-N-A-T, not E-L-I-N-A-T.

18 Q. So the record is clear, for purposes of the indictment  
19 initials were used to protect, in accordance with the  
20 Department of Justice policy, the privacy of the people who are  
21 not being criminally charged. Is that your understanding?

22 A. That is my understanding of it, yes.

23 Q. You provided the date of birth for individuals who were --  
24 that you had interviewed as listed in the indictment?

25 A. Correct.

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1 Q. And it was you who actually testified before the Grand Jury  
2 and confirmed that those were their dates of birth?

3 A. Yes, sir.

4 Q. Can we turn to the next minor, please?

5 A. Yes, Esther, E-S-T-H-E-R, Simon, S-I-M-O-N, date of birth  
6 05/16/2005, at that time was 17 years old.

7 Q. Next.

8 THE COURT: Going back to the first minor, how old was  
9 the first minor, and can you repeat his or her name, please?

10 THE WITNESS: Yes. That was number 17, it is Anaika,  
11 A-N-A-I-K-A, Saint, S-A-I-N-T, C-L-I-N-A-T, date of birth  
12 09/17/2015.

13 BY MR. McMILLAN:

14 Q. And the next minor, please?

15 THE COURT: Let me pause there. For the first minor,  
16 Mr. McMillan, where is this minor -- where does she appear on  
17 the indictment in terms of counts?

18 MR. McMILLAN: Your Honor, I listed all of them in  
19 my --

20 THE COURT: I am asking you now.

21 MR. McMILLAN: I don't know. I am looking for my  
22 indictment right now.

23 THE COURT: All right. Go find your indictment.

24 MR. ROTH: Count 29, your Honor.

25 THE COURT: Okay. Thank you, Mr. Roth.

1           That is showing a year of birth of 2005, but the agent  
2 just testified to a year of birth of 2015.

3       BY MR. McMILLAN:

4       Q. Special Agent Woodbury, with respect to Count 29 that lists  
5 an individual by the name of ES, do you know who that was, with  
6 a date of birth 2005?

7       A. ES would have been probably Esther Simon, number 29.

8       Q. Yes.

9           THE COURT: So, do you know which count correspond to  
10 Anaika Saint Clinet?

11       MR. ROTH: Judge, may I interject just to move things  
12 along a little bit?

13           Count 18 is what the agent should look for.

14       THE COURT: Okay. It does appear to match up. Is  
15 that, Mr. McMillan --

16       MR. McMILLAN: It is, your Honor.

17       THE COURT: Okay. So, why don't we just clarify the  
18 record. Minor number one is referenced in Count 18 with a year  
19 of birth of 2015.

20           Minor number two, Esther Simon, is referenced in Count  
21 29, with a year of birth of 2005.

22           Please proceed with your examination.

23       BY MR. McMILLAN:

24       Q. Directing your attention to JW in Count 61, do you see  
25 that -- well, who is JW?



1 A. That would be Jamantis Williamson, and it is  
2 J-A-M-A-N-T-I-S, Williamson, W-I-L-L-I-A-M-S-O-N, with a date  
3 of birth of 07/07/2007, and he is listed as an unaccompanied  
4 minor.

5 Q. And with respect to Count 62, SP, who is that with a year  
6 of birth of 2007?

7 A. Samantha Pierre, S-A-M-A-N-T-H-A, P-I-E-R-R-E, also an  
8 unaccompanied minor.

9 Q. With respect to Count 76, RM, with a year of birth of 2009,  
10 who is that?

11 A. That was not 76, that is 77, and it was Ryan Mauriseau,  
12 R-Y-A-N, M-A-U-R-I-S-E-A-U, date of birth of 3/1/2009, also  
13 unaccompanied.

14 Q. And how did you know that these people -- when I say  
15 people, these minors --

16 THE COURT: Excuse me. I'm confused. The agent  
17 testified it is not Count 76, it is Count 77?

18 THE WITNESS: Well, it could be -- I am sorry -- I am  
19 looking at my sheet, so it may be off by one from the count,  
20 but RM in the indictment is Ryan Mauriseau.

21 MR. McMILLAN: Your Honor, in my indictment RM is 76.

22 THE COURT: Well, is there some confusion in the  
23 numbers, Mr. McMillan?

24 MR. McMILLAN: No, your Honor. I don't know what  
25 Special Agent Woodbury is looking at in terms of the count up

1 there. I am looking at the indictment.

2 THE COURT: It is your burden to clear this up and to  
3 present it in a clear and understandable way. When a witness  
4 is testifying to a count that doesn't exist in the indictment  
5 it generates confusion. I am trying to understand exactly who  
6 you are referring to.

7 BY MR. McMILLAN:

8 Q. Do you have a copy of the indictment there before you?

9 A. No, I do not. I have a copy of the list of names, that is  
10 why I might be off by one. Sorry for the confusion, your  
11 Honor.

12 THE COURT: How many total minors were on the vessel,  
13 Agent Woodbury?

14 THE WITNESS: Six total minors, three accompanied,  
15 three unaccompanied.

16 THE COURT: Who is the sixth minor? We have at this  
17 point gone through, I believe, five.

18 MR. McMILLAN: May I approach the witness for a  
19 minute, your Honor?

20 THE COURT: You may.

21 THE WITNESS: Sophia Joseph.

22 BY MR. McMILLAN:

23 Q. Just so the record is clear, is this the indictment that  
24 was returned against the Defendant?

25 A. Yes.

1 Q. Who is in Count 76?

2 A. RM.

3 Q. And then you mentioned one other minor?

4 A. I am sorry, I misspoke. The names originally given to the  
5 names we had here, what they gave to the Coast Guard and then  
6 after they were interviewed should be initials BM or MB.

7 Q. For who?

8 A. The name is Benshacka Mondeser (phon).

9 Q. And a date of birth 2016?

10 A. Correct, 12/22/2016.

11 MR. McMILLAN: May I approach the witness again, your  
12 Honor?

13 BY MR. McMILLAN

14 Q. Showing you Count 65, is that the person that you are  
15 referring to, BM?

16 A. That is correct.

17 Q. Is that a total of six minors?

18 A. That is correct.

19 Q. Of those six minors, how many were unaccompanied?

20 A. Three.

21 Q. Could you tell the Court which ones those were, please?

22 A. Yes. That was Samantha Pierre, Jamantis Williamson, and  
23 Ryan Mauriseau.

24 THE COURT: How do you know they were unaccompanied?

25 THE WITNESS: Asking the question through the

1 interpreter, your Honor, if they had a parent or legal guardian  
2 with them.

3 THE COURT: What did they say?

4 THE WITNESS: No. I remember clearly one of the  
5 individuals said their uncle was there. In terms of being  
6 accompanied, it has to be a parent or a legal guardian.

7 And then the other three were either with their  
8 parents or -- I think all three were with their mother.

9 BY MR. McMILLAN:

10 Q. By the other three, you are talking about accompanied  
11 minors as distinguished from the unaccompanied minors?

12 A. Correct.

13 MR. McMILLAN: Unless your Honor has any questions, I  
14 would tender the witness.

15 THE COURT: So, just to be clear, you said one of the  
16 three had an adult relative?

17 THE WITNESS: Yes, your Honor, one of the ones that we  
18 would consider un accompanied had an adult relative there, but  
19 for legal purposes, they are not considered a legal guardian or  
20 a parent.

21 THE COURT: How many of these minors were  
22 unaccompanied without any adult relative?

23 THE WITNESS: Two.

24 THE COURT: All right. Mr. Roth.

25 CROSS-EXAMINATION

1 BY MR. ROTH:

2 Q. So, who were the two minors that were unaccompanied by any  
3 adult relative?

4 A. I am sorry, the two that were unaccompanied completely?

5 Q. Yes.

6 A. That was Jamantis Williamson and Ryan Mauriseau.

7 Q. Okay.

8 A. Samantha Pierre was the one that had an adult relative that  
9 was there.

10 Q. If you help me, what count was she in?

11 A. Samantha would be 62, I believe.

12 Q. Thank you. I think you are right because the initials are  
13 SP.

14 So, young Mr. Williamson, who interviewed him?

15 A. That would have been myself.

16 Q. You interviewed every single alien on board?

17 A. No. The further numbers down the row here, we split it up,  
18 there was three of us, but the two that were back to back, 61,  
19 62, I remember there because I believe I was like the numbers  
20 40 through 70 something, to the end.

21 Q. Okay. So, how is it that you are able to recall that you  
22 interviewed Mr. Williamson?

23 A. From our notes -- from notes that we have.

24 Q. Do you have rough notes of this?

25 A. Not like what I asked or anything like that, it's just

1 names and dates of birth.

2 Q. From here, it looks like your notes are typed up?

3 A. No. I'm sorry, they're handwritten, just photocopies.

4 Q. You have copies of that?

5 A. Correct.

6 Q. Who was your interpreter when you interviewed Mr.  
7 Williamson?

8 A. I don't recall her name, it was an HSI special agent.

9 Q. Is it in your notes?

10 A. No. These are just names and dates of birth.

11 Q. Was Mr. Williamson specifically asked if anybody was  
12 looking after him on board the vessel, if you remember?

13 A. I am not sure. I don't recall on him.

14 Q. How old was he?

15 A. Mr. Williamson was -- 2007, so 15, 14, 15.

16 Q. Did he speak English or just Creole?

17 A. No. He was through an interpreter.

18 Q. Did you have any way of verifying his age or date of birth?

19 A. No. Just by what he told us.

20 If I recall, most, if -- I am not sure if any had any  
21 passports or birth certificates that I can recall.

22 Q. On occasion it is the policy of HSI not to return minors  
23 that are unaccompanied; is that correct?

24 A. I have no idea of the policy on that, sir.

25 Q. You don't know if any of these individuals had some

1 incentive or motivation to claim to be minors?

2 A. I -- no.

3 Q. Okay. The only other unaccompanied minor is RM, I think  
4 you said the last name was Mauriseau?

5 A. Correct.

6 Q. And he is listed in Count 76?

7 A. Correct.

8 Q. Anybody else on board this vessel with the last name  
9 Mauriseau?

10 A. I do not believe so, no.

11 Q. Like --

12 A. Mr. Mauriseau claimed Bahamian citizenship, but he spoke  
13 Creole as well.

14 Q. Were you able to verify any biographical information about  
15 him or was this just from what he told you?

16 A. Just from what he told us, sir. We didn't conduct  
17 interviews of each and every alien, or any of the aliens at all  
18 onboard the vessel. We were simply there to assist the Coast  
19 Guard in the biometrics gathering to see who we actually had  
20 onboard the vessel. We weren't there to conduct interviews of  
21 the people there. We asked basic questions, names, dates of  
22 birth, whether they were minors, whether or not they were  
23 accompanied or not, and country of citizenship.

24 Q. Paragraph 57 lists an adult with the initials LM. Do you  
25 know what the last name of LM is?

1 A. What number was that again, sir?

2 Q. It's 57.

3 A. Lusa Mesador (phon).

4 Q. And Count 59 lists an adult whose initials are RM. Do you  
5 know that individual's last name?

6 A. Rosland Morensi (phon).

7 Q. Count 71 lists an individual whose initials are VM. Do you  
8 know that person's last name?

9 A. Mihalence, M-I-H-A-L-E-N-C-E.

10 Q. Were the adults on the vessel asked whether they were  
11 guardians or had legal authority with regard to the two  
12 unaccompanied minors?

13 A. They would have been asked if they had any family members  
14 onboard the boat.

15 Q. But in terms of guardians, was anybody asked if they were  
16 legal guardians of these two alleged unaccompanied minors?

17 A. We usually ask for family members first, mother, father,  
18 brother, sister, siblings, anything like that and usually if  
19 there is anybody there watching them.

20 If it's friends of the family, people that are entrusted  
21 with the child, for us they are still considered unaccompanied  
22 in terms of, you know, accompanied versus unaccompanied minor  
23 child, which is -- for the point of where -- for Samantha  
24 Pierre, like there was a gentleman that was there that was  
25 supposedly bringing her to her family here in Fort Lauderdale.



1 But the other ones, as far as I can recall, I don't think  
2 they said -- off the top of my head I can't recall. Her I  
3 remember in particular because the guy was very persistent that  
4 he was there with her.

5 MR. ROTH: Your Honor, those are my only questions.

6 THE COURT: All right. Any redirect?

7 MR. McMILLAN: No thank you, your Honor.

8 THE COURT: Mr. Woodbury, let me just ask.

9 With respect to minor JW, was he asked whether he was  
10 accompanied by an adult relative or legal guardian?

11 THE WITNESS: Your Honor, which one was JW again? I  
12 am sorry. Oh, he would have been asked if there was somebody  
13 there watching, if there was a parent there.

14 THE COURT: Did he say whether there was -- did he  
15 answer that question one way or the other?

16 THE WITNESS: Yes. The answer to that was no.

17 THE COURT: Okay. Now moving on to a minor with the  
18 initials RM. This person is reflected in --

19 THE WITNESS: 76.

20 THE COURT: -- Count 76, correct. Same question.

21 THE WITNESS: Yes, your Honor, same answer.

22 THE COURT: All right. Okay.

23 MR. ROTH: May I ask one followup question?

24 THE COURT: You may.

25

1 BY MR. ROTH:

2 Q. Is that information in your notes?

3 A. No. That is what I am recalling from being on the boat and  
4 asking the interpreter.

5 Q. I mean, it is material to the charge. Why wouldn't you  
6 have included it in your notes?

7 A. There was -- I put whether they are accompanied or  
8 unaccompanied, but I didn't put down questions asked. There  
9 was 78 people on a small Coast Guard cutter, it was kind of a  
10 chaotic scene, we were trying to get through it fast. I  
11 apologize, there wasn't any ill will or intent to hide the  
12 fact.

13 MR. ROTH: Thank you.

14 THE COURT: All right. Thank you, Agent, you may  
15 return to counsel table.

16 THE WITNESS: Thank you, your Honor.

17 THE COURT: Okay. Turning back to the objection, this  
18 is an objection to paragraph 22 in the PSI, which provides a  
19 four level specific offense characteristic on account of the  
20 offense involving the smuggling of unaccompanied minors.

21 I am going to overrule the objection. I think there  
22 is sufficient evidence by a preponderance of the evidence in  
23 light of the agent's testimony that there were two  
24 unaccompanied minors on the vessel, one initials JW, the other  
25 initials RM. Those individuals' dates of birth were solicited,

1 and although there were not full-blown interviews conducted of  
2 each and every one of these minors, law enforcement did ask the  
3 minors whether they were accompanied. The minors indicated  
4 they were not.

5 This is different from at least one other minor who  
6 did indicate an adult relative, so I think there is sufficient  
7 evidence ultimately presented to the Court to overrule the  
8 objection to paragraph 22 given the offense involving two  
9 unaccompanied minors. The first is referenced in Count 61 and  
10 the second is in Count 76.

11 Anything further on this objection, Mr. Roth?

12 *MR. ROTH:* No, your Honor.

13 *THE COURT:* Okay.

14 What is your next objection?

15 *MR. ROTH:* Respectfully, Judge, the Defense objects to  
16 the two-level enhancement in paragraph 25 for application of a  
17 special skill, that enhancement. And the long and short of it  
18 is that Probation agreed with the Government and recommended  
19 the enhancement because Mr. Saunders knew how to take a vessel  
20 into the St. Lucie inlet and navigate the vessel up the inlet  
21 to a specific marina.

22 This is something that a thousand Floridians and  
23 visitors with yachts and vessels do every week. They enter the  
24 St. Lucie inlet, which we know from the testimony is marked by  
25 navigation buoys, and they go up the inlet and they dock their

1 vessel in a marina.

2 It is not a special skill. It is a real reach, I  
3 think, to say that somehow Mr. Saunders needed to possess some  
4 sort of special skill in order to do this. This is something  
5 that is a very common skill and I don't think the enhancement  
6 is supported by the facts.

7 *THE COURT:* Okay. Mr. McMillan.

8 *MR. McMILLAN:* Your Honor, as I stated in my written  
9 response to Defendant's objections, the Eleventh Circuit case  
10 law on this issue is very clear that if the skill is not one  
11 possessed by members of the general public it is considered a  
12 special skill. I cited all the case law for that therein.

13 Most importantly, your Honor, I don't think that  
14 anybody in this courtroom, with the sole exception of our  
15 maritime enforcement officer back there, could get in a boat  
16 and be expected to go and pilot a GPS to a particular landing  
17 spot in the Bahamas in the middle of the night.

18 The Defendant in this case not only possessed the  
19 intimate knowledge of the location that he was taking this  
20 boatload of illegal aliens to, but was able to navigate the  
21 boat at nighttime, to program his Navionics system, which I  
22 don't think, again, anybody in this courtroom or any person  
23 that we interviewed, a random person on the street would know  
24 how to do that or even know what Navionics was.

25 But most importantly, your Honor, just because there

1 are a thousand or thousands of people piloting vessels to and  
2 from the Bahamas, or foreign countries for that matter, doesn't  
3 mean that those people don't possess a special skill that isn't  
4 kept by the average person.

5 Airline pilots, the same thing. There may be  
6 thousands of airline pilots in the world; that doesn't mean  
7 that they don't have a special skill. That isn't something  
8 that we can ordinarily expect to grab a person on the sidewalk  
9 and say get in this helicopter or plane and fly it.

10 The same is true with travel from the Bahamas,  
11 especially surreptitious travel from the Bahamas in the middle  
12 of the night to a specific landing location is the special  
13 skill of a boat captain.

14 I would add to that, your Honor, as we set forth in  
15 our written response, the Defendant stated that he had made  
16 that trip to his co-defendant, Mr. Rodriguez, on at least two  
17 prior occasions before this one.

18 And additionally, as we set forth in the Pre-Sentence  
19 Investigation Report, this is not far from the Defendant's  
20 first transit of a smuggling vessel into the United States.  
21 This particular vessel was loaded with an exceptionally large  
22 number of aliens and an exceptionally large vessel compared to  
23 most of the runs that would come before the Court in other  
24 smuggling ventures.

25 Obviously, I can't speak for the Court, but I would

1 submit that this is probably the largest one certainly I am  
2 aware of ever having occurred in the northern sections of the  
3 Southern District of Florida, or for that matter the Southern  
4 District of Florida, period.

5 So, in view of those facts, your Honor, I would submit  
6 that we have complied with the requirements of Eleventh Circuit  
7 case law in establishing that the Defendant abused and used a  
8 special skill and -- a special skill in piloting this boat from  
9 the Bahamas to the United States.

10 *THE COURT:* All right. The Defendant objects to the  
11 two-level enhancement in paragraph 25 on the grounds, quote,  
12 "that the mere fact he knew where the dropoff point was, a  
13 public marina, doesn't support the application of a special  
14 skill enhancement."

15 There is no objection to any of the facts in the PSI  
16 that touch on the special skill and I do believe it is  
17 warranted in this case based on the circumstances, specifically  
18 the fact that the Defendant captained, along with his  
19 co-defendant, a large 54-foot vessel in the middle of the  
20 night. There was no navigation equipment on the vessel itself,  
21 although the Defendant had an app that he apparently chose to  
22 delete upon detection.

23 The Defendant had specialized knowledge of routes the  
24 record shows, which is why he was chosen, given his knowledge  
25 of the specific landing point at the marina. He had previously

1 captained vessels, showing his skills in the business of  
2 captaining.

3 And so, for those reasons, his specialized knowledge  
4 of the routes, his prior captaining of vessels to the inlet,  
5 the fact that he used a navigation app and was hired for his  
6 specific knowledge of the landing routes, I think there is  
7 specific evidence to show on these facts that the special skill  
8 enhancement is warranted. Again, the dim lights is another  
9 factor that supports the special skill, which is something that  
10 I don't believe ordinary people would be able to captain a  
11 54-foot vessel under these conditions.

12 So, for those reasons the two-level enhancement would  
13 apply. The objection is overruled.

14 That leaves us with one additional objection, Mr.  
15 Roth, and that's the obstruction enhancement; is that correct?

16 *MR. ROTH:* Yes, your Honor, if we're also lumping in  
17 the allegation that Mr. Saunders threatened violence toward Mr.  
18 Rodriguez. We objected to that in paragraph 12 and we objected  
19 to the allegations in paragraph 16 included in the revised PSR  
20 that the Defendant obstructed justice.

21 I don't think these facts support in any way Mr.  
22 Saunders obstructed justice.

23 *THE COURT:* Okay. Mr. McMillan, what do you propose  
24 in terms of evidence for this enhancement?

25 *MR. McMILLAN:* Your Honor, the United States calls

1 Carlos Rodriguez Rodriguez to the stand. He is in the cell  
2 block area.

3 MR. ROTH: Judge, is this in regard to the allegations  
4 in paragraph 16 or paragraph 12? I would like to take that  
5 separately if I could.

6 What does the Government claim he did to obstruct  
7 justice other than the alleged threat to Mr. Rodriguez? If  
8 that is the basis of the objection, and the sole basis, then I  
9 am fine with doing it all together.

10 THE COURT: I am not following.

11 Paragraph 12 refers to Mr. Saunders repeatedly  
12 threatening and intimidating Mr. Rodriguez Rodriguez, calling  
13 him a snitch, saying he was going to talk to his people in the  
14 Bahamas, that people would visit Rodriguez' house and put holes  
15 in it, quote.

16 Why does that not support an obstruction enhancement?

17 MR. ROTH: Well, if those facts were true, I believe  
18 that it would support the enhancement.

19 THE COURT: Okay. That is, I think, the reason for  
20 the witness' testimony. Let's call Mr. Rodriguez Rodriguez.

21 Mr. McMillan --

22 MR. McMILLAN: Yes, your Honor, the Marshals are  
23 getting him right now.

24 MR. ROTH: Judge, if Mr. Rodriguez has made any  
25 statements that were reduced to writing, I request they be



1 turned over to Defense at this time.

2 THE COURT: Mr. McMillan, have all those statements  
3 been give over to Mr. Roth?

4 MR. McMILLAN: Your Honor, any statements that were  
5 adopted by, seen by, or agreed to by this Defendant were given  
6 over to the Defense in discovery already. There have been no  
7 new statements. There are no reports that we have that were  
8 shown to this witness to see whether he agreed to them.

9 I can tell the Court that the Marshal Service was  
10 notified about the threats by this Defendant. Mr. Rodriguez  
11 Rodriguez was not privy to those statements to the Marshal  
12 Service or adopted those statements in any way.

13 THE COURT: Is there any issue, Mr. Roth?

14 MR. ROTH: Yes, your Honor. If he reported these  
15 threats, I presume the way things work --

16 THE COURT: You can ask those questions if you wish,  
17 Mr. Roth. I do not see a basis to exclude this witness from  
18 testifying. So, let's bring Mr. Rodriguez in. The point of  
19 this exercise is to determine whether there is evidence to  
20 support the obstruction enhancement on the basis of threats and  
21 intimidation. So let's proceed. Thank you.

22 Good morning, sir. You will be sworn in now.

23 CARLOS RODRIGUEZ RODRIGUEZ, GOVERNMENT'S WITNESS, SWORN

24 THE COURT: You may be seated.

25 Mr. McMillan, you may begin.

DIRECT EXAMINATION

BY MR. McMILLAN:

Q. Good morning, Mr. Rodriguez Rodriguez.

A. Good morning.

Q. I will just call you Mr. Rodriguez if that is okay. That is how you respond on the street, isn't it?

A. Yes, sir.

Q. Okay.

Now, if I can just introduce you for purposes of the record. You were prosecuted in this case for alien smuggling yourself?

A. Yes, sir.

Q. And on February 22, 2023, were you on board a smuggling vessel with another person in this courtroom?

A. Yes, sir.

Q. Who is that person you were on board the vessel with?

A. Mr. Raymond Saunders.

Q. Can you point to him?

A. He's over there. (Witness indicating.)

Q. Can you describe what he is wearing?

A. A blue shirt, black hair.

MR. McMILLAN: Your Honor, may the record reflect that the witness has identified the Defendant, Raymond Saunders?

THE COURT: The record so reflects.

Pauline A. Stipes, Official Federal Reporter

1 BY MR. McMILLAN:

2 Q. You testified at trial in regards to this matter, did you  
3 not?

4 A. Yes, sir.

5 Q. At any time during this case has anyone made any threats to  
6 you?

7 A. Yes, sir.

8 Q. Who is the person who made those threats to you?

9 A. Mr. Saunders.

10 Q. That is the person you have already described as Raymond  
11 Saunders, the Defendant in this case?

12 A. Yes, sir.

13 Q. When was the first time that you encountered one of those  
14 threats?

15 A. I would say the first time when we went to Homeland  
16 Security facility.

17 Q. In West Palm Beach or some other place?

18 A. I can't recall exactly where the place is because I am not  
19 familiar with the place, but I believe it was a Homeland  
20 Security facility.

21 Q. Okay. Then what happened?

22 A. What happened is we came in, we was taken to the holding  
23 cell, and that is when Mr. Saunders started saying to me --  
24 calling me a bunch of different names, calling me snitch,  
25 telling me what if I told the police that he was the captain,

1 and he was hiding, and I don't say any word to him, he keep  
2 talking and talking. So he says to me as soon as he get a  
3 chance to get to the phone and he be able to talk to his  
4 people, I guess he was -- what was going to happen back in  
5 Nassau.

6 At that moment I told Mr. Montenegro, the Immigration  
7 officer, the Homeland Security officer, to please move me from  
8 the same room where I was with Mr. Saunders because at that  
9 moment I was extremely tired, I was frustrated, I cannot even  
10 take one more of his words, that every word coming out of his  
11 mouth, so I told him, please move me to another room, and he  
12 did.

13 Q. If I can ask you, you said you could not take one more  
14 minute of his words. Who is the "his" that you are referring  
15 to?

16 A. That is the words Saunders say to me.

17 Q. After that, were you separated from him?

18 A. Yes, sir. Mr. Montenegro put me in another room, and I was  
19 in a room by myself.

20 Q. Did you feel safer then?

21 A. Yes, much better, the fact that I sleep a couple hours.

22 Q. However, was that the end of the threats?

23 A. No, sir.

24 Q. Were you threatened again?

25 A. Yes, sir.

1 Q. Where and when did that happen?

2 A. That happened when we went to court, when we was coming  
3 back to court and they take us down to the facility down in,  
4 um-m-m, West Palm Beach, county jail with all the inmates, and  
5 he started talking about the same thing over and over, and then  
6 he says all the snitches supposed to be in the place they need  
7 to be.

8 Q. And again, when you say he was talking about it, who were  
9 you referring to?

10 A. Mr. Saunders, talking about me.

11 Q. Now, on that occasion was he with you just all by yourself?

12 A. No. He was -- he was -- he speak his language also.

13 Q. When you say speak his language, do you mean English?

14 A. No. He was speaking Haitian language.

15 Q. Is that Creole language?

16 A. I guess so. That is what it is called.

17 Q. Do you speak Creole yourself?

18 A. No, sir.

19 Q. When you saw Defendant Saunders that morning speaking with  
20 these other individuals, could you tell what they were talking  
21 about?

22 A. Yes. He was talking about -- as soon as he get to talk to  
23 his people, because he has some bosses doing time in America,  
24 he would tell the people, so somebody be coming to my house and  
25 hurt my family, put some force on my family, and that is

1 really, really get to me, and I constantly hear him saying  
2 that.

3 Q. Now, if I can just ask you to please slow down a little  
4 bit.

5 You said that he said something about bosses of his being  
6 in the United States?

7 A. Yes, some of the people that he knows, I don't know what  
8 the boss he talking about, but that is what he says.

9 Q. Were in the United States?

10 A. Yes, they are doing time in America.

11 Q. And he would ask them to do what?

12 A. That he would make some calls so somebody would come to my  
13 house in Nassau, he knows where I live, he been to my house  
14 twice.

15 Q. I was going to ask you, how did he know where you lived?

16 A. He went to my house twice, sir.

17 Q. Did you have family members at that point in time at least  
18 living there?

19 A. Yes. That is my house, that is where I live with my wife  
20 and my kids, my children.

21 Q. And after those statements were made to you, what did you  
22 do next?

23 A. I don't say a word. Like I said to you, I was quiet all  
24 the time, just listen to him, listen to him, and that is when  
25 we came to the Federal Court.

1 Q. What happened then?

2 A. Then, at the court, when you see the judge, and Raymond --  
3 that's what we call him -- he constantly talking to the other  
4 guys because apparently there was another gentlemen, the other  
5 guy was calling him a snitch, and he says the snitch shouldn't  
6 be in the place that they are.

7 So I keep listening to him, and when he says again that as  
8 soon as he get a chance to talk to his people, I would see what  
9 happen -- I am going to see what is going to happen, that is  
10 all. That is when I broke, and I said do what you got to do  
11 now, do what you got to do now.

12 And then, at that moment one of the U.S. Marshal lady  
13 officer pulled me out of the room, and I said, please talk to  
14 Mr. George Woodbury right here in front of me. Please tell him  
15 that I am afraid of Mr. Saunders, and I can't take it anymore.  
16 Please remove me from him. I don't want to see him, I can't be  
17 around him. I can't take the threat.

18 Q. Okay. After those statements were -- did you also tell  
19 your Defense attorney about these threats?

20 A. Yes. Yes, sir.

21 Q. And after you related that to Special Agent Woodbury and  
22 your defense attorney, were you moved to a separation situation  
23 from the Defendant?

24 A. Yes. The U.S. Marshal lady say it is already being taken  
25 care of by Mr. Woodbury and they will have complete separation

1 from me and him. On one or two occasions we was traveling  
2 together, and I was getting concerned and I bring it back to  
3 the attention, I don't want to be around him.

4 Q. What was your understanding of the reason why Mr. Saunders  
5 was making these statements to you?

6 A. He called me a snitch, he say I cooperating with the  
7 Government.

8 Q. And you said he said something about holes in houses?

9 A. Yes. That is what he says.

10 Q. What did he say about that?

11 A. He says that when he gets to talk to his people, there will  
12 be people around my house and put some holes in my house, and  
13 also he said wherever I am in America, wherever I go, he would  
14 get a chance to talk to people. They would put holes in me. I  
15 don't know what kind of holes he means.

16 Q. When you said holes in the house, did he mean construction  
17 work on the house or something else?

18 A. No, sir. Your Honor, can I say this, please? There is an  
19 incident happening in Nassau, Bahamas at the beginning of this  
20 year, January, where they have one of the worst of the worst  
21 execution style crime --

22 MR. ROTH: Objection, irrelevant.

23 THE COURT: One moment, sir. Overruled. You may  
24 finish your statement, sir.

25 THE WITNESS: Can I say?



1           THE COURT:   Yes.

2           THE WITNESS:   I was very concerned.   This incident  
3 happened back in January this year where there was execution  
4 style crime that happened in Nassau, Bahamas, on the island  
5 where I live.   I don't know if he live there, but that is where  
6 I live with my children and my wife.   I am very concerned about  
7 it.   Every day, every night I am thinking about that.   I can't  
8 even eat, I can't sleep just thinking about it.

9           That is the statement he put in my head, whenever I  
10 get a chance to talk to these people there will be some holes  
11 around my house.

12           I don't know if I have explained it too good or more  
13 clear than that.   So --

14       Q.   Okay.

15           MR. McMILLAN:   Your Honor, may I also inquire into the  
16 issue of the recklessness of the Defendant and hiding in the  
17 console at this time, or do you want to treat that separately?

18           THE COURT:   There was testimony during trial given on  
19 this issue.   Do you anticipate going beyond the scope of the  
20 testimony for that purpose?

21           MR. McMILLAN:   I don't think it is necessary.   If the  
22 Court is aware of that, then I will tender the witness.

23           THE COURT:   If there is a need to call you back,  
24 sir -- please stay put.   At this time you will be  
25 cross-examined by Mr. Roth on the testimony you have given thus

1 far.

2 Mr. Roth.

3 MR. ROTH: Judge, again, I would renew my request for  
4 the Government to turn over to me any reports that exist that  
5 document the complaints that he made to authorities about being  
6 threatened.

7 THE COURT: Are there any such reports, Mr. McMillan?

8 MR. McMILLAN: Any reports which document these  
9 threats? Your Honor, I also have to keep in mind that the  
10 objection was filed at 8:30 p.m. last night for this. I didn't  
11 have a chance to search all of my files in this regard.

12 I have given Defense counsel all the reports we have  
13 concerning this case. I know I sent emails to the Marshal  
14 Service about it. I know that Josh Woodbury conducted an  
15 interview of the Defendant that I was present at where the  
16 statements were made. I don't know at this point whether or  
17 not there are statements in his report that relate to that.

18 That is the only answer I can give the Court.

19 THE COURT: Mr. Roth, this is precisely why your  
20 exceedingly untimely objections really disturb the proper  
21 course of this hearing.

22 What I have heard is that there are no additional  
23 reports of which Mr. McMillan is aware at this point. What is  
24 your remaining objection?

25 MR. ROTH: My objection, your Honor, is that this

1 allegation never really cropped up in the Pre-Sentence Report  
2 until the report was revised on the 8th of this month.

3 *THE COURT:* These issues were clearly set forth in the  
4 Government's objections, which were received by you via CM/ECF  
5 at the end of July. I don't accept your suggestion that this  
6 is something that happened within the last few days.

7 In any event, it is 11:48. We will take a ten-minute  
8 break, Mr. McMillan, so you and Mr. Woodbury can check your  
9 files to determine if there are any other records that speak to  
10 the question of that alleged threats as testified to by this  
11 witness.

12 The Court is in recess until 12:00.

13 (Thereupon, a short recess was taken.)

14 *THE COURT:* All right. Mr. McMillan, any updates?

15 *MR. McMILLAN:* No, your Honor. We have no reports in  
16 response to that issue, and by reports, I mean any written  
17 statement taken by Special Agent Woodbury.

18 *THE COURT:* Okay, thank you, Mr. McMillan.

19 The Government has represented there are no written  
20 reports in the case file specifically documenting the matter of  
21 the threats lodged by Mr. Saunders allegedly towards Mr.  
22 Rodriguez.

23 Let's continue with cross-examination, Mr. Roth.

24 *MR. ROTH:* Thank you.

25 CROSS-EXAMINATION

Pauline A. Stipes, Official Federal Reporter

1 BY MR. ROTH:

2 Q. So, Mr. Rodriguez, of the various people you reported these  
3 threats to, did anybody in your presence take a report from  
4 you?

5 A. No.

6 Q. What about Mr. Montenegro at HSI, did he write up any kind  
7 of report?

8 A. I don't know what he wrote, sir, but I told him to keep us  
9 separated.

10 Q. What about the correction officer at the jail in West Palm,  
11 did anyone write a report?

12 A. I don't know.

13 Q. What about a deputy United States Marshal at the lockup in  
14 Federal Court, did anybody write up a report that you claim you  
15 were threatened and show the report to you?

16 A. I spoke to her and asked her to call Mr. Woodbury.

17 Q. Okay. Did she prepare a report and show it to you?

18 A. No. I don't see any report.

19 Q. Okay. Now, you and Mr. Saunders were arrested on  
20 February 22nd of this year, 2023, correct?

21 A. That is correct.

22 Q. And you allege that he started threatening you right from  
23 the first day?

24 A. Right from the boat, yes.

25 Q. Since February 22nd, '23, have you or anyone in your family

1     been harmed?

2     A.   Say again.

3     Q.   Since February 22nd of 2023, have either you or anyone in  
4     your family been harmed?

5     A.   At the present time, no.  I haven't speak to my family for  
6     almost two weeks now.

7     Q.   As far as you know, no bullet holes have been put in your  
8     house?

9     A.   Up to now, no, sir.

10    Q.   Okay.  When you say holes, that is what you are referring  
11    to, right?

12    A.   To me, what I understand is it would be bullet hole.

13    Q.   And he has been to your house twice, right?

14    A.   That is correct.

15    Q.   So he knows where you live?

16    A.   That is correct.

17    Q.   You testified in this case on May 8, 2023, right?

18    A.   Say again.

19    Q.   You testified in this case?

20    A.   That's correct.

21    Q.   You testified under oath?

22    A.   That's correct.

23    Q.   And I will show you this transcript, but let me ask you  
24    first, during your testimony, do you recall these questions and  
25    these answers, page 28, line four?

1 "Question: Where did you first meet Raymond Saunders for  
2 the very first time?

3 "Answer: First time I ever met him, first time I ever see  
4 him in my life, that was that Tuesday before we left.

5 "Question: Okay. And what day did you actually leave on,  
6 what day of the week, Monday, Tuesday, Wednesday?

7 "Answer: I met him on Tuesday afternoon, around 3:45 in  
8 the afternoon, and we left at 6:50, we left the dock, so right  
9 after --

10 "Question: I am sorry, you left at what time?

11 "Answer: We left the dock, the marina around 6:50 a.m.,  
12 and we went through the harbor out to the outlet of Nassau  
13 entrance right after 7:00 in the morning."

14 Do you remember those questions and answers?

15 A. Yes, sir.

16 Q. Would you like to see a copy of the transcript?

17 A. No, sir.

18 Q. So my question to you is: Were you lying on May 8th while  
19 you were here under oath about when you first met Mr. Saunders  
20 or were you lying today when you said that Mr. Saunders had  
21 been to your house on two prior occasions?

22 A. He did been to my house on two prior occasions with the  
23 organizer.

24 Q. Were you lying when you said "I met him on Tuesday  
25 afternoon around 3:45 in the afternoon?"

1 A. I was not lying, sir.

2 Q. Pardon me?

3 A. I was not lying, that is correct.

4 Q. That is the first time you ever met him?

5 A. Yes, sir.

6 Q. So how could he have been to your house twice?

7 A. What you mean?

8 Q. If the first time you ever met him was at 3:45 in the  
9 afternoon on Tuesday, and you left on Wednesday at 6:50 from  
10 the dock, how is it that he could have been at your house on  
11 two prior occasions?

12 A. He came to my house with the organizer, I told you.

13 Q. When?

14 A. When they came to pick me up to go off the boat that  
15 evening, and they drove me back home.

16 Q. And what time was that?

17 A. That was in the evening.

18 Q. So, that is after you met him at 3:45 on Tuesday?

19 A. That is correct.

20 Q. What time did they go to your house?

21 A. They came to my house after 6:00 that evening.

22 Q. And that is how he knows where your house is?

23 A. That is correct.

24 Q. So, if he had bad intentions to harm you or your family or  
25 shoot up your house, he would have known where it was, correct?

1 A. Sir, I can't answer that question because I don't know what  
2 is in people mind. I can't read people mind.

3 Q. Nothing has happened, right?

4 A. Pardon me?

5 Q. Nothing has happened to you or your family?

6 A. Up to this date, no, sir.

7 Q. Do you have any explanation for why you told multiple  
8 people about these threats and no officer ever took a report?

9 A. I just say a couple minutes ago that early this year, back  
10 in January, there was a crime, an execution style --

11 Q. That is not my question.

12 A. Excuse me, sir, I want to explain something to you.

13 Q. No, first you answer my question, then you can explain all  
14 you want.

15 A. Say again.

16 THE COURT: What is the question, Mr. Roth?

17 MR. ROTH: I think I momentarily have forgotten the  
18 question.

19 THE COURT: All right. Any other questions?

20 BY MR. ROTH:

21 Q. My only other question is whether you have any explanation  
22 for why none of the three law enforcement people you spoke to  
23 about being threatened prepared any written reports about it.

24 A. I can't explain that question to you, sir. I just say what  
25 I have to say to the officers.



1 Q. You testified in court in a previous case where you also  
2 got a sentence reduction, correct?

3 A. A sentence reduction or no, that is what I was sentenced  
4 for, sir.

5 Q. But you previously testified in court against Defendants  
6 for a terrible crime that you described at trial, right?

7 A. Yes, I did.

8 Q. Did you claim that you were threatened in that case?

9 A. Yes, I did.

10 Q. So this is the second time you claim to be threatened?

11 A. Not the second time, I spoke to my attorney about it.

12 Q. And ultimately, with everything you went through, you  
13 received a reduced sentence of 25 months?

14 A. I was sentenced to 24 months.

15 Q. 24 months, okay. And that is the second time you have  
16 testified in a case, and it's the second time you claim you  
17 were threatened?

18 A. I have to say this because that is the only way I feel more  
19 safer. I have to notify the Court, sir. I have my family, my  
20 wife, my son and daughter live in Nassau.

21 Q. When you told the Court that the very first time that you  
22 met Mr. Saunders was Tuesday afternoon before the Wednesday  
23 morning departure, that was correct?

24 A. That is the first time I saw him, yes, sir.

25 Q. How did you get to the dock?

1 A. When the person picked us up, the organizer, he got him  
2 first and he come for me.

3 Q. Who was with the organizer?

4 A. Mr. Saunders.

5 Q. What about Mr. Lubin?

6 A. Mr. Lubin was not with him.

7 Q. Was Mr. Lubin at the dock?

8 A. Mr. Lubin came to the dock, yes.

9 MR. ROTH: Your Honor, that is all.

10 THE COURT: Any redirect Mr. McMillan.

11 MR. McMILLAN: Very briefly, your Honor.

12 REDIRECT EXAMINATION

13 BY MR. McMILLAN:

14 Q. Mr. Rodriguez, after you advised myself and Special Agent  
15 Woodbury about the threats, did we ask you whether you could  
16 move your family?

17 A. Yes, sir.

18 Q. Okay.

19 MR. McMILLAN: No further questions, your Honor.

20 THE COURT: All right. Thank you. Thank you, Mr.  
21 Rodriguez, you may be excused. If there is a need to call you  
22 back, we will let you know. Thank you.

23 THE WITNESS: Thank you, your Honor.

24 THE COURT: All right. Mr. Roth, Section 3C1.1 lists  
25 as an example of obstructing the administration of justice the

1 threatening, intimidating, or otherwise unlawfully influencing  
2 a co-defendant, witness, or juror directly or indirectly or  
3 attempting to do so.

4 What argument do you wish to present, if any, on why  
5 that enhancement doesn't apply in this case?

6 *MR. ROTH:* Your Honor, the argument I would make is, I  
7 would ask the Court to reject the testimony of Mr. Rodriguez as  
8 not credible.

9 He does this every time he gets arrested and charged,  
10 he becomes an informant, he claims that the people he is an  
11 informant against have threatened him. He did it in his last  
12 case, he did it in this case.

13 If such threats were made and reported on three  
14 separate occasions to three separate law enforcement agencies,  
15 the Marshal Service, HSI, and the Palm Beach County Sheriff's  
16 Office Corrections, there should be some documentation, but  
17 there isn't.

18 *THE COURT:* All right. Any argument, Mr. McMillan?  
19 And then I would like to rule on this objection.

20 *MR. McMILLAN:* Yes, your Honor.

21 Legally this meets the very definition of commentary  
22 application note 4 -- 3C1.1. Obviously we defer to the Court  
23 as to your Honor finding credibility as to the witness,  
24 however, there is ample documentation that the Defendant was  
25 threatened and that he was moved. There just are not reports

1 that this witness has seen which are discoverable evidence.

2 So, excuse me, with all due respect to Mr. Roth's  
3 argument, it isn't that there is a lack of documentation; it is  
4 that there are no discoverable reports where these things were  
5 written down. That is all.

6 So -- and the fact that his family hasn't been harmed  
7 was because -- that was my last question, did we tell you to  
8 move your family, that is why.

9 *THE COURT:* All right. Now, beyond the threatening  
10 conduct, is there any other basis the Government seeks as  
11 support for the 3C1.1 enhancement?

12 *MR. McMILLAN:* Your Honor, I know we argued as an  
13 additional ground the lies and -- that were made to -- false  
14 statements to law enforcement in subparagraph two of docket 84.  
15 We will withdraw that basis and proceed solely on the threats  
16 to the co-defendant.

17 *THE COURT:* All right. Okay.

18 On the matter of paragraph 26 of the PSI, I think  
19 there is ample evidence to support the adjustment for  
20 obstruction of justice given what the Court determines to be  
21 credible testimony on the part of the co-defendant, Mr.  
22 Rodriguez, that Mr. Saunders made numerous threatening remarks  
23 to Mr. Rodriguez as stated both today in his testimony and  
24 memorialized in the PSI at paragraph 12.

25 Those statements included calling Rodriguez a snitch,

1 saying that as soon as he talked to his people in the Bahamas  
2 Rodriguez would see what was going to happen, and most  
3 concerningly telling Mr. Rodriguez that people were going to  
4 visit his house and put holes in it.

5 I think those are clearly subsumed within the  
6 obstruction enhancement. I find the testimony credible. The  
7 fact that Mr. Rodriguez has previously cooperated in another  
8 Federal case and previously experienced threats doesn't, in my  
9 view, discredit his testimony as evaluated both today and  
10 during trial. And the fact that there aren't any discoverable  
11 reports specifically documenting the threats, again, is not a  
12 reason, in my view at this point, to discredit the  
13 co-defendants' testimony, which I find credible having observed  
14 his demeanor both today and during trial.

15 So, for those reasons the obstruction of justice  
16 enhancement will apply.

17 There is one final issue, and that's the paragraph 23  
18 enhancement under 20 1.1(b)(6). Do you have an objection to  
19 that, Mr. Roth?

20 MR. ROTH: What paragraph is that?

21 THE COURT: Paragraph 23.

22 MR. ROTH: Judge, we did not object -- yes, I --

23 THE COURT: Did you lodge an objection prior to today  
24 to paragraph 23, yes or no?

25 MR. ROTH: Special skill, yes.

1           THE COURT: No, no. Paragraph 23 concerns the offense  
2 involving intentionally or recklessly creating a substantial  
3 risk of death or serious bodily injury to another person.

4           MR. ROTH: Your Honor, we conceded that the lack of  
5 safety equipment on the vessel meets that criteria.

6           THE COURT: Okay. So there's no Defense objection to  
7 paragraph 23. Any other Defense objections?

8           MR. ROTH: Only our motion requesting a variance.

9           THE COURT: That is not an objection to the  
10 calculation of the advisory Guidelines. Any objections that we  
11 have not yet covered to the PSI?

12           MR. ROTH: No, your Honor. The Defense has raised  
13 every objection it intended to raise.

14           THE COURT: Okay. Mr. McMillan, any objections on the  
15 part of the Government.

16           MR. McMILLAN: No, your Honor, none that haven't been  
17 resolved.

18           THE COURT: It was my understanding that you were  
19 seeking the application of an additional enhancement related to  
20 the Defendant's conduct going at full throttle and causing a  
21 near catastrophic event, and you were seeking that in addition  
22 to the 20 1.1(b) (6) enhancement.

23           MR. McMILLAN: Yes, your Honor. I think that is too  
24 close a call in terms of double counting. I would prefer to  
25 save that for our argument for an upward variance. I don't

1 think it is necessary.

2 THE COURT: Have you withdrawn that objection then?

3 MR. McMILLAN: We do right now, your Honor, yes.

4 THE COURT: There are no objections on the part of the  
5 Government, so let me go ahead and adopt the PSI in full, along  
6 with the calculations stated therein. I have overruled the  
7 Defense objections for the reasons previously stated.

8 So, we are left with a total offense level of 28, with  
9 a criminal history category of I, yielding an advisory  
10 Guideline range of 78 to 97 months imprisonment.

11 Any objections, Mr. Roth?

12 MR. ROTH: Only those previously stated.

13 THE COURT: Having calculated the advisory Guideline  
14 range, let me hear argument from the Government first as to an  
15 appropriate sentence.

16 MR. McMILLAN: Would that include our motion for  
17 upward variance, your Honor?

18 THE COURT: Yes.

19 MR. McMILLAN: Your Honor, very briefly, we request an  
20 upward variance in this case, the amount of which we defer to  
21 the Court upon.

22 But I believe that in this case we have two  
23 aggravating factors which are not adequately taken into  
24 consideration by the Guidelines.

25 The first is the obstructive conduct by the Defendant

1 providing these lies which the Defendant -- this is more than  
2 minimal planning. The Defendant went to the trouble of  
3 actually creating an app -- or using an app to send himself  
4 emails in preparation for the commission of the crime, as well  
5 as bringing a roll of tape, and the Court may recall the  
6 testimony of Defendant Rodriguez Rodriguez where he stated that  
7 all I need for this trip is my phone and a roll of tape.

8 That did materially obstruct our investigation and  
9 cause an immense amount of extra investigation. That said,  
10 when we look at the Guideline itself, the standards are so high  
11 for lies made to law enforcement as opposed to lies made to the  
12 Court being held as obstructive conduct.

13 We believe it is something the Court can and should  
14 take into consideration because it dovetails into the fact that  
15 the Defendant in this case is at especially high likelihood of  
16 recidivism and under representation of criminal history.

17 For the reasons I articulated in our motion for an  
18 upward variance, it is detailed in paragraphs 48, 49, and 50 of  
19 the Pre-Sentence Investigation Report, this is far from the  
20 Defendant's first smuggling venture into the United States.

21 Now, he wasn't prosecuted for any of those three  
22 occasions, one, because he was a minor; two, I don't know why  
23 my office in Broward County didn't prosecute him, but the facts  
24 strongly suggest that those were smuggling ventures of their  
25 own.



1 But separate and apart, and even if we didn't have  
2 that, most importantly, we have the Defendant's statements to  
3 his co-defendant Rodriguez Rodriguez, as detailed in pages 31  
4 through 32 of Docket Entry 86, which details defendant --  
5 co-defendant Rodriguez Rodriguez' prior testimony that the  
6 Defendant boasted to him of having made two previous alien  
7 smuggling ventures into this same marina area on the river and  
8 that was the reason why he was selected for this very trip.

9 Additionally, your Honor, we have the issue of  
10 recklessness. As articulated in our written pleading, the  
11 Defendant is largely being held responsible for not having  
12 enough life jackets on board the boat, and that is in itself a  
13 basis for the recklessness adjustment, which is set forth in  
14 paragraph 23 of the PSI.

15 However, the conduct here goes well, well, well beyond  
16 that, for most of which, as detailed in pages 48 through 54 of  
17 co-defendant Rodriguez Rodriguez' testimony at Docket Entry 86,  
18 Defendant Saunders was piloting the boat until they had reached  
19 the inlet area and entered into it. When they were approaching  
20 a rock jetty which has a green light on it the Defendant  
21 Saunders suddenly said, the man, the man, the cops, don't call  
22 me captain, and then disappeared into the storage compartment  
23 after throttling up the boat, according to Defendant Rodriguez  
24 Rodriguez, to maximum speed, which is also what the law  
25 enforcement officers observed, the boat speeding ahead and

1 heading toward the rock jetty.

2 If co-defendant Rodriguez Rodriguez had not intervened  
3 and straightened out the boat and pulled the throttle back as  
4 he was boarded by law enforcement, we could have very easily  
5 had a major catastrophe on the area, especially because those  
6 people were packed in that cabin and unable to easily to get  
7 out except through one door, and we don't know how many, if any  
8 of them, even knew how to swim, and finally, the completely  
9 inadequate number of flotation devices that were available  
10 there.

11 This tragically, your Honor, could have been a  
12 maritime disaster of unmitigated proportions, and the term  
13 catastrophe is not one that I invented here, but rather was  
14 used by co-defendant Rodriguez himself on page 54 through 55 of  
15 his testimony.

16 "I was left at the wheel with full throttle, so I had  
17 to steer the boat.

18 "Okay. What would have happened if you had not been  
19 steering the boat at that point?

20 "Answer: A catastrophe."

21 Your Honor, I think all those things the Court can  
22 take into consideration, the Defendant's past history of  
23 smuggling, the Defendant's obstructive conduct, which is a  
24 byproduct of him having realized that eventually his number was  
25 going to be up. He had stopped previously. That,

1 unfortunately, did not stop him, rather it convinced him he  
2 needed to work on his game so he would have a better excuse the  
3 next time he got stopped.

4 Finally, the extreme reckless and dangerous conduct  
5 which the Defendant exhibited in this case which imperiled the  
6 lives of 76 illegal aliens, and in particular the lives of six  
7 minors, of whom three were unaccompanied and would have no one  
8 to look out for them had this boat suddenly started sinking and  
9 everyone started fighting over the one life preserver that was  
10 found on board the boat.

11 Unless your Honor has any questions, that would  
12 conclude the Government's presentation.

13 *THE COURT:* Thank you. Mr. Roth.

14 Before you begin, Mr. Roth, does the Government object  
15 to the Defense request to give the Defendant credit under the  
16 proposed 4C1.1 amendment?

17 *MR. McMILLAN:* Your Honor, under the circumstances,  
18 no, we don't.

19 *THE COURT:* Okay. So that would amount to what  
20 exactly in the form of an adjusted Guideline range?

21 *MR. McMILLAN:* A two point downward adjustment from  
22 the current Guidelines, your Honor. I will defer to the U.S.  
23 Probation Officer because they are always the best.

24 *THE COURT:* Ms. Gagliardi.

25 *PROBATION OFFICER:* Yes, your Honor, with the two

1 level reduction it would be an offense level of 26, a criminal  
2 history category I, 63 to 78 months as opposed to 78 to 97.

3 *THE COURT:* Okay. Mr. Roth, am I correct that that  
4 request is on the condition that the Defendant not in the  
5 future seek an adjustment should that amendment go into effect?

6 *MR. ROTH:* Yes, your Honor. Essentially the Defendant  
7 is waiving the right to come back to court and claim the same  
8 benefit.

9 *THE COURT:* All right. Was there a signed waiver  
10 submitted on the docket?

11 *MR. ROTH:* No, your Honor. I have had this come up in  
12 a number of cases. My last case was with Judge Altonaga, and I  
13 had a signed waiver prepared, and she sort of ridiculed the  
14 thought that a signed waiver was necessary.

15 *THE COURT:* I only ask because it was I think attached  
16 to your filing, but it was unsigned. Let's call the Defendant  
17 and get him under oath on this issue.

18 (Thereupon, the Defendant was duly sworn.)

19 *THE COURT:* Mr. Saunders, do you understand -- your  
20 attorney has moved for a two level downward variance on the  
21 basis of a proposed amendment to the Guidelines that would  
22 effectively reduce your advisory Guideline range by two offense  
23 levels on the basis of the absence of any prior criminal  
24 convictions.

25 Do you understand what we have been discussing, sir?

1           THE DEFENDANT: Yes, ma'am.

2           THE COURT: Now, that amendment has not actually been  
3 promulgated. It has been proposed, but it has not actually  
4 gone into effect? Do you understand that, sir?

5           THE DEFENDANT: Yes, I do.

6           THE COURT: What I would like to ask you, sir, is do  
7 you understand that if the Court agrees and grants that two  
8 level downward variance under the proposed 4C1.1 enhancement,  
9 that you are agreeing not to in the future seek a sentence  
10 reduction on the basis of that amendment should it go into  
11 effect?

12          THE DEFENDANT: Yes, ma'am.

13          THE COURT: Do you agree that you would not be seeking  
14 that amendment in the future?

15          THE DEFENDANT: Yes.

16          THE COURT: Has anybody forced you or coerced you to  
17 give up your right in the future to seek such an adjustment if  
18 the Court were to grant it to you now?

19          THE DEFENDANT: Nope.

20          THE COURT: Have you consulted with your attorney on  
21 this issue?

22          THE DEFENDANT: Yes, I have.

23          THE COURT: Do you have any questions about this  
24 issue?

25          THE DEFENDANT: No, I don't.

1           THE COURT: All right. Okay, I am going to find the  
2 Defendant has knowingly agreed not to seek a future sentence  
3 reduction should the Court grant a two level downward variance  
4 on the basis of that proposed amendment, 4C1.1.

5           Let's move past that, Mr. Roth. Any additional  
6 argument?

7           MR. ROTH: Just briefly, your Honor. If your Honor  
8 recalls from the trial, the law enforcement agent who boarded  
9 the vessel testified he boarded a fast-moving vessel, that he  
10 went to the area where the throttle is and pulled the throttle  
11 back.

12           His testimony again demonstrates another inconsistency  
13 from the testimony of the cooperating defendant, Mr. Rodriguez.  
14 And what the Government's really asking you to do, you know,  
15 Mr. Rodriguez -- they are concerned that Mr. Saunders has done  
16 a previous alien smuggling venture based on the testimony of  
17 Mr. Rodriguez.

18           The Government seems totally unconcerned that Mr.  
19 Rodriguez has a prior conviction for conspiracy to bring in  
20 over five kilograms of cocaine into Florida. They were very  
21 satisfied to ask the Court to sentence him to 24 months --

22           THE COURT: It is 25.

23           MR. ROTH: 25, I am sorry -- for the conduct that was  
24 described at the trial of this case, and then ask for an upward  
25 variance for the younger co-defendant who is not a licensed

1 boat captain, but really it creates not only a total rejection  
2 of the way the jury saw the case, because I think the jury  
3 verdict was the product of showing some concern for this  
4 individual, some leniency. I know that is not their  
5 prerogative, but I am trying to interpret how the jury reached  
6 its verdict.

7 The result of granting an upward variance would be  
8 such a gross sentencing disparity between two similarly  
9 situated Defendants only that Mr. Rodriguez has that prior  
10 aggravated felony conviction.

11 *THE COURT:* But they are not similarly situated. One  
12 defendant cooperated greatly, offered credible testimony in the  
13 Court's view. I know you disagree with that. Not to mention  
14 the fact that Mr. Rodriguez did not concoct a fake duress  
15 scheme sending him pretend messages before hand and leading law  
16 enforcement on a wild goose chase pretending that has been  
17 bound in a secret compartment.

18 So I think it is quite hard to compare the two, Mr.  
19 Roth.

20 *MR. ROTH:* Well, I will say, to Mr. Saunders' credit,  
21 to the extent that he deserves some, that defense was never  
22 presented to the jury. Mr. Saunders had enough respect for the  
23 Court and enough personal dignity to not assert that defense in  
24 a court of law.

25 *THE COURT:* All right. But the fact remains that he

1 still sent those messages to himself, he still indicated to law  
2 enforcement that he had been bound and coerced into that little  
3 hole, and those were the statements that he made to law  
4 enforcement.

5 So, even if he didn't formally assert the defense as a  
6 legal matter at trial, those statements and that theory was  
7 clearly presented to law enforcement in the course of the  
8 investigation.

9 MR. ROTH: Judge, Defendants, especially before they  
10 have a lawyer, before they even have their first appearance,  
11 they often make untruthful statements to law enforcement. The  
12 real test is once a person has a lawyer, has advice of counsel,  
13 understands how the Court system works, what the law is, I ask  
14 the Court to judge his conduct from that point in time and to  
15 discount the ignorant conduct of a person who is unfamiliar  
16 with the American court system and who had the good sense to  
17 leave that sort of thing behind and try the case on the facts.

18 THE COURT: Okay. Well, I think there was also an  
19 element of your ethical obligation, Mr. Roth. You knew those  
20 texts were fabricated and that was a limitation as well.

21 Let's continue. Any other argument under 3553(a) in  
22 your view?

23 MR. ROTH: No, other than I ask the Court to consider  
24 his age, the fact that he would really benefit from getting an  
25 educational program inside the Bureau of Prisons. He would



1 like to complete his education, and he has family all in the  
2 Bahamas. It will be very difficult for him to get visitors.  
3 Once he completes his sentence he is going to go into the  
4 custody of the United States Immigration Service, which is  
5 going to extend the period of custody even beyond the sentence  
6 that the Court imposes.

7 So I would ask the Court to consider that, his conduct  
8 in the courtroom. I think he showed respect for the Court, he  
9 was dignified. Everything from the moment that he came into  
10 this Court system he demonstrated his respect for the authority  
11 of the Court, and I would ask the Court to glean from that that  
12 there is a possibility that, under the right circumstances, Mr.  
13 Saunders could learn how to live peacefully and lawfully in  
14 society.

15 THE COURT: All right. Thank you.

16 MR. ROTH: Thank you, Judge.

17 THE COURT: Mr. Saunders, you are welcome to address  
18 the Court if you'd like, but you are not required to make a  
19 statement.

20 THE DEFENDANT: No, ma'am.

21 THE COURT: All right. Thank you.

22 Anything further from the Government?

23 MR. McMILLAN: Your Honor, just that, as the Court has  
24 already pointed out, the ethical obligations of Defense counsel  
25 are what caused the withdrawal of Docket Entry 42. The

1 Defendant's attempt to use this fake defense in front of the  
2 jury is a request for a duress jury instruction. It wasn't  
3 until he was confronted with the actual physical evidence of  
4 the application sending himself the text messages that he  
5 developed this sudden dignity to withdraw this as a defense.  
6 Had it not been for that, he would have happily presented it to  
7 the jury. Thank you.

8 *THE COURT:* All right. Having granted that two level  
9 variance on the basis of the proposed 4C1.1 amendment, we are  
10 now in an adjusted guideline of 63 to 78 months imprisonment.  
11 The Government has sought an upward variance in the Court's  
12 discretion under the 3553(a) factors, and Defense opposes that  
13 upward variance.

14 I have considered the statements of all parties, the  
15 Pre-Sentence Report which contains the advisory Guidelines and  
16 the statutory factors set forth in Title 18 United States Code,  
17 Section 3553(a).

18 It is the finding of the Court that the Defendant is  
19 not able to pay a fine.

20 I think the trial record in this case is quite  
21 illuminating on the 3553(a) factors, as is the PSI which the  
22 Court has adopted. The seriousness of this offense, Mr.  
23 Saunders, is quite extreme. It goes without saying that  
24 smuggling 76 illegal aliens into the country, crammed into a  
25 cabin on a vessel in the middle of the night, accelerating upon

1 detection causing a near catastrophic accident is highly  
2 reckless and could have resulted in extreme loss of life.

3 This comes after prior ventures by you to the United  
4 States in which you captained or at least co-captained other  
5 vessels with other illegal aliens. Those incidents,  
6 unfortunately, emboldened you it appears to continue this  
7 conduct, which you then ultimately did leading you to the  
8 instant indictment.

9 So, I think there is a very important and punctuated  
10 need to deter you from continuing any criminal conduct. I also  
11 think the seriousness of this offense is very pronounced and  
12 concerning. There is also a very important need to promote  
13 respect for the law, sir.

14 Clearly you have revealed a complete disregard for the  
15 law in concocting a scheme that was calculated, that was  
16 strategized, that involved sending yourself fake text messages  
17 and then pretending to be bound, and trotting out that  
18 fabricated theory until, of course, it all fell apart and the  
19 truth became known.

20 So, on the basis of those facts, I do think an upward  
21 variance is warranted under the circumstances, exercising my  
22 discretion under the 3553(a) factors, having considered all of  
23 the parties' submissions.

24 It is the judgment of the Court that the Defendant,  
25 Raymond Saunders, is committed to the Bureau of Prisons to be

1 imprisoned for 85 months. This term consists of 85 months for  
2 each of Counts 1 through 6, and 12 months as to Count 77, all  
3 such terms to be served concurrently.

4 Upon release from imprisonment, the Defendant shall be  
5 placed on supervised release for a term of three years. This  
6 term consists of three years as to each of Counts 1 through 6,  
7 and one year as to Count 77, all such terms to be served  
8 concurrently.

9 Within 72 hours of release from the custody of the  
10 Bureau of Prisons, the Defendant shall report in person to the  
11 Probation Office in the district where released.

12 While on supervised release, the Defendant shall  
13 comply with the mandatory and standard conditions of  
14 supervision as referenced in Part F of the PSI. The Defendant  
15 also shall comply with the following special conditions:

16 Surrendering to Immigration for removal, permissible  
17 search, and unpaid restitution, fines or special assessments as  
18 noted in part F of the PSI and as stated in the addendum to the  
19 PSI.

20 It is further ordered that the Defendant shall pay  
21 immediately to the United States a special assessment of \$100  
22 as to each of Counts 1 through 6 and Count 77, for a total of  
23 \$700.

24 The total sentence therefore is 85 months  
25 imprisonment, three years supervised release, and a \$700

Pauline A. Stipes, Official Federal Reporter

1 special assessment.

2 I also want to make very clear on the record that  
3 should there be any determination in the future as to an  
4 erroneous application of a guideline provision, that I would  
5 impose the same sentence of 85 months imprisonment in  
6 consideration of the 3553(a) factors given the very seriousness  
7 of the offense and the need to specifically deter this  
8 Defendant from committing future crimes.

9 Now that sentence has been imposed, does the Defendant  
10 or his counsel object to the Court's finding of fact or to the  
11 manner in which sentence was pronounced?

12 MR. ROTH: Yes, your Honor, only as to those matters  
13 that were argued in court before your Honor and specifically  
14 articulated, we would seek to preserve those issues by  
15 objecting.

16 THE COURT: Are you referring to the sentencing  
17 enhancements today?

18 MR. ROTH: Yes, your Honor.

19 THE COURT: Okay. Sir, you have a right to appeal the  
20 sentence imposed. Any Notice of Appeal must be filed within 14  
21 days after the entry of judgment. If you are unable to pay for  
22 the cost of an appeal, you may apply for leave to appeal in  
23 forma pauperis.

24 Is forfeiture at issue, Mr. McMillan?

25 MR. McMILLAN: Your Honor, I have spoken to our asset

1 forfeiture section and no. The vessel was administratively  
2 forfeited and the \$5,000 in Bahamian currency has been  
3 forfeited to Martin County Sheriff's Office as I understand it.

4 THE COURT: All right. Anything else from Probation?

5 PROBATION OFFICER: No, your Honor, thank you.

6 THE COURT: Mr. Saunders, may God bless you.

7 The Court is in recess for five minutes until we  
8 resume with the next case.

9 (Thereupon, the hearing was concluded.)

10 \* \* \*

11 I certify that the foregoing is a correct transcript  
12 from the record of proceedings in the above matter.

13  
14 Date: August 19, 2023

15 /s/ Pauline A. Stipes, Official Federal Reporter

16 Signature of Court Reporter  
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Pauline A. Stipes, Official Federal Reporter

<p><b>MR. McMILLAN: [44]</b> 2/5 3/22 4/10 4/20 6/25 8/6 8/10 8/14 8/16 8/20 10/1 12/4 12/8 15/17 15/20 16/15 17/20 17/23 18/17 19/10 20/12 25/6 28/7 31/24 32/21 33/3 34/21 41/14 41/20 42/7 43/14 50/10 50/18 51/19 52/11 54/15 54/22 55/2 55/15 55/18 59/16 59/20 65/22 69/24</p> <p><b>MR. ROTH: [48]</b> 2/10 3/6 3/16 3/24 5/3 6/2 6/6 9/8 10/24 11/17 11/20 13/15 15/23 16/10 25/4 25/22 26/12 27/11 27/14 31/15 32/2 32/16 32/23 33/13 40/21 42/2 42/24 43/23 48/16 50/8 51/5 53/19 53/21 53/24 54/3 54/7 54/11 55/11 60/5 60/10 62/6 62/22 63/19 64/8 64/22 65/15 69/11 69/17</p> <p><b>PROBATION OFFICER: [3]</b> 2/16 59/24 70/4</p> <p><b>THE COURT: [122]</b> <b>THE COURTROOM DEPUTY: [1]</b> 2/2</p> <p><b>THE DEFENDANT: [10]</b> 2/15 2/20 60/25 61/4 61/11 61/14 61/18 61/21 61/24 65/19</p> <p><b>THE WITNESS: [18]</b> 12/13 13/17 15/9 17/17 18/13 18/20 19/24 20/3 20/16 20/22 25/10 25/15 25/18 25/20 26/15 40/24 41/1 50/22</p>	<p><b>2</b></p> <p><b>20 [2]</b> 53/18 54/22 <b>2005 [4]</b> 15/6 16/1 16/6 16/21 <b>2007 [3]</b> 17/3 17/6 22/15 <b>2009 [2]</b> 17/9 17/12 <b>2015 [4]</b> 14/16 15/12 16/2 16/19 <b>2016 [2]</b> 19/9 19/10 <b>2023 [7]</b> 1/8 13/6 34/13 44/20 45/3 45/17 70/14 <b>21 [1]</b> 9/20 <b>22 [5]</b> 11/2 13/6 26/18 27/8 34/13 <b>22nd [3]</b> 44/20 44/25 45/3 <b>23 [6]</b> 53/17 53/21 53/24 54/1 54/7 57/14 <b>23-14013 [1]</b> 2/4 <b>23-CR-14013-CANNON [1]</b> 1/3 <b>24 [3]</b> 49/14 49/15 62/21 <b>25 [6]</b> 5/7 27/16 30/11 49/13 62/22 62/23 <b>26 [2]</b> 52/18 60/1 <b>28 [2]</b> 45/25 55/8 <b>28th [1]</b> 3/22 <b>29 [4]</b> 15/24 16/4 16/7 16/21 <b>2C1.1 [1]</b> 5/6</p> <p><b>3</b></p> <p><b>3/1/2009 [1]</b> 17/12 <b>307 [1]</b> 1/19 <b>31 [1]</b> 57/3 <b>32 [1]</b> 57/4 <b>33301 [1]</b> 1/20 <b>33401 [1]</b> 1/16 <b>3434 [1]</b> 1/23 <b>3553 [6]</b> 64/21 66/12 66/17 66/21 67/22 69/6 <b>3:45 [4]</b> 46/7 46/25 47/8 47/18 <b>3C1.1 [3]</b> 50/24 51/22 52/11</p> <p><b>4</b></p> <p><b>40 [1]</b> 21/20 <b>400 [1]</b> 1/16 <b>42 [1]</b> 65/25 <b>48 [2]</b> 56/18 57/16 <b>49 [1]</b> 56/18 <b>4C1.1 [4]</b> 59/16 61/8 62/4 66/9</p> <p><b>5</b></p> <p><b>50 [1]</b> 56/18 <b>500 [1]</b> 1/15 <b>54 [2]</b> 57/16 58/14 <b>54-foot [2]</b> 30/19 31/11 <b>55 [1]</b> 58/14 <b>561-803-3434 [1]</b> 1/23 <b>561-820-8711 [1]</b> 1/17 <b>57 [2]</b> 23/24 24/2 <b>59 [1]</b> 24/4</p> <p><b>6</b></p> <p><b>61 [3]</b> 16/24 21/18 27/9 <b>62 [3]</b> 17/5 21/11 21/19 <b>63 [2]</b> 60/2 66/10 <b>65 [1]</b> 19/14</p>	<p><b>6:00 [1]</b> 47/21 <b>6:50 [3]</b> 46/8 46/11 47/9</p> <p><b>7</b></p> <p><b>70 [1]</b> 21/20 <b>71 [1]</b> 24/7 <b>72 [1]</b> 68/9 <b>76 [16]</b> 10/1 10/2 10/5 10/6 11/17 17/9 17/11 17/17 17/21 19/1 23/6 25/19 25/20 27/10 59/6 66/24 <b>7697 [1]</b> 1/20 <b>77 [6]</b> 2/23 17/11 17/17 68/2 68/7 68/22 <b>78 [8]</b> 6/2 9/25 10/1 26/9 55/10 60/2 60/2 66/10 <b>7:00 [1]</b> 46/13</p> <p><b>8</b></p> <p><b>84 [1]</b> 52/14 <b>85 [4]</b> 68/1 68/1 68/24 69/5 <b>86 [2]</b> 57/4 57/17 <b>8711 [1]</b> 1/17 <b>8:00 p.m [1]</b> 3/13 <b>8:30 [1]</b> 42/10 <b>8th [3]</b> 3/18 43/2 46/18</p> <p><b>9</b></p> <p><b>9/17/2015 [1]</b> 14/16 <b>954-745-7697 [1]</b> 1/20 <b>97 [2]</b> 55/10 60/2 <b>99 [1]</b> 5/7</p> <p><b>A</b></p> <p><b>A-N-A-I-K-A [2]</b> 14/11 15/11 <b>a.m [1]</b> 46/11 <b>able [7]</b> 7/12 21/21 23/14 28/20 31/10 36/3 66/19 <b>about [31]</b> 10/8 10/12 20/10 23/14 33/10 37/5 37/8 37/10 37/21 37/22 38/5 38/8 39/19 40/8 40/10 41/6 41/7 41/8 42/5 42/14 44/6 44/10 44/13 46/19 48/8 48/23 48/23 49/11 50/5 50/15 61/23 <b>above [1]</b> 70/12 <b>absence [1]</b> 60/23 <b>abused [1]</b> 30/7 <b>accelerating [1]</b> 66/25 <b>accept [2]</b> 4/23 43/5 <b>accident [1]</b> 67/1 <b>accompanied [9]</b> 18/14 20/6 20/10 20/18 23/23 24/22 25/10 26/7 27/3 <b>accordance [1]</b> 14/19 <b>according [1]</b> 57/23 <b>account [2]</b> 7/12 26/19 <b>acquitted [1]</b> 7/10 <b>actual [1]</b> 66/3 <b>actually [9]</b> 7/17 8/17 13/25 15/1 23/19 46/5 56/3 61/2 61/3 <b>add [2]</b> 9/9 29/14 <b>addendum [1]</b> 68/18 <b>addition [2]</b> 7/5 54/21 <b>additional [6]</b> 4/19 31/14 42/22 52/13 54/19 62/5 <b>additionally [2]</b> 29/18 57/9</p>
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